IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 10137 of 2004

Between:

1 Ayanapurapu Venkata Ramana Rao, S/o Late Chandrasekhara Rao,
2 Ayanapurapu Lakshmi Devi, W/o Late Chandrasekhara Rao,
Both petitioners are residing at H.No. 2-42, Railway Station Road, Madhira, Khammam District.

..... PETITIONERS

AND

1 The Government of A.P., rep. by its Principal Secretary,
Roads and Buildings Department, Secretariat, Hyderabad.
2 The Executive Engineer, Roads & Buildings Dept, Khammam,

Khammam District.
3 The Assistant Executive Engineer, Roads & Buildings Dept, Madhira, Khammam District.
4 The District Collector, Khammam District, Khammam.
5 The Mandal Revenue Officer, Madhira Mandal, Khammam District.
6 The Secretary, Gram Panchayat, Madhira, Khammam District.
7 T.D. Anandha Rao, W/o T. Gurappa, Asst. Executive Engineer, (R&B) Section, Madhira, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, order or direction more particularly in the nature of Certiorari calling for records relating to and in connecting with the order passed by Respondents 3 in Proc. No. AEE/Ra 11 BHA/2004-05 dated 17-6-2004 and quash the same as illegal without jurisdiction capricious, violative of Principles of Natural Justice, malafide violative of Articles 14 and 21 and 300-A of Constitution of India and contrary to legal principles laid down by Hon'ble Supreme Court of India in Government of Andhra Pradesh VS T. Krishna Rao (AIR 1982 SC 1082) and order dated 4-3-2003 in w.P.No. 25584 of 2003 of this Hon'ble Court

Counsel for the Petitioner: MR.POTTI VENKATA RAMANA RAO

Counsel for the Respondent Nos.1 to 5 & 7: GP FOR ROADS & BUILDINGS

Counsel for the Respondent No. 6 : Mr A. Giridhar Rao, S.C for Gram Panchayat.

The Court made the following :

ORDER:

Heard both sides and at their request the main writ petition itself is taken for disposal.

The petitioners herein claimed to be in occupation of the land and having constructed a premises therein filed this writ petition inter alia seeking to assail the correctness of the impugned notice dated 17-6-2004 issued by respondent No.3 herein asking the petitioners to vacate the premises, failing which action will taken against them.

The main ground urged on behalf of the petitioners is that the respondents have absolutely no power or jurisdiction to issue any such encroachment notice and seek their eviction. More so, in view of the provisions of A.P. Land Encroachment Act, where under, the authorities constituted are totally different for taking any such action. On earlier occasion, in view of the such similar action, this Court has allowed WP No.25584 of 2003, dated 04.3.2004 and directed that action to be taken in accordance with law only. Therefore, the impugned action of the respondents is totally not in accordance with law and the same is liable to be set aside.

Learned Government Pleader for the respondents submits that the notice is only an inquisitive nature but it cannot be termed for the removal of the encroachment. No doubt the power to remove encroachments vests with the authorities under A.P. Land Encroachment Act.

Having considered the submissions made and also on perusal of the material available on record, it is seen that the impugned notice is virtually asking the petitioners to vacate the premises. Under the provisions of the A.P. Land Encroachment Act, the authorities constituted to take any such action are

totally different and no such power is conferred on any of the respondents herein for issuing notice or taking any action for removal of encroachment. In view of the same, there is no way, but to hold that the impugned notice is without power.

Accordingly, the writ petition is allowed. It shall however open for the authorities concerned to take appropriate action in accordance with law after giving notice and opportunity to the petitioner. No costs.

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B. PRAKASH RAO, J

Dt. 28-10-2004

Kvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Twenty Eigth Day of OctoberTwo thousand and Four.

To

1 The Principal Secretary, Government of A.P., ,
Roads and Buildings Department, Secretariat, Hyderabad.
2 The Executive Engineer, Roads & Buildings Dept, Khammam,

Khammam District.
3 The Assistant Executive Engineer, Roads & Buildings Dept, Madhira, Khammam District.
4 The District Collector, Khammam District, Khammam.
5 The Mandal Revenue Officer, Madhira Mandal, Khammam District.
6 The Secretary, Gram Panchayat, Madhira, Khammam District.
7 Two CCs to GP for Roads & Buildings, High Court of A.P., Hyderabad.

8. Two CD copies.

HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO. 10137 OF 2004

28TH OCTOBER 2004